IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8031 OF 2004

Vivek Vishnu Vaidya Petitioner

versus

Sunita Digambar Patkar & anr. Respondents

Miss Alpa Javeri, adv. for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2004

PC :

1. Heard advocate for petitioner.

2. Petitioner is aggrieved by rejection of application for condonation of delay being Civil Miscellaneous Application No.92 of 2003 by the Additional District Judge, Kalyan vide order dated 15th April 2004.

3. Learned Judge has observed that the petitioner is none other than the son of respondent no.2 and was directed by this Court to file an undertaking in prescribed form as a condition for obtaining time to vacate the suit

premises. This Court while dismissing the writ petition wherein decree for possession in favour of respondent no.1 landlady was challenged, directed that the decree will not be executed if the undertaking is filed by the tenant, his wife and son. Admittedly, undertaking was not filed by the wife and son, who is present petitioner. Thereupon, the decree was executed and possession was taken by the landlady from petitioner and the tenant (respondent) of the suit premises. It is thereafter that the application came to be made in the Executing Court invoking Order XXI, Rule 99 of the Code of Civil Procedure, 1908. That application was decided by Trial Court vide order dated 8th July 2003.

4. The order of Trial Court dated 8th July 2003 was sought to be challenged by filing an appeal in the Court of District Judge, Thane. Since the appeal was admittedly time barred, application was made for condonation of delay in filing the appeal.

5. Apart from the fact that the conduct of petitioner does not warrant exercise of discretion in his favour, additionally the Court below has observed that there is no sufficient

cause for filing the appeal belatedly. The cause as shown in the application for condonation of delay has not been found to be satisfactory in the absence of relevant particulars. It is not demonstrated to me that the order suffers from any error apparent on the face of record or can be termed as perverse so as to call for interference by this Court under Article 227 of Constitution of India. Petition is, therefore, dismissed.

(S.C.DHARMADHIKARI, J.)